IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1346 OF 1999.

Smt.Bhagabai Fakira Balve & Ors. .. Applicant.

versus

Smt.Anandabai R.Balve & Ors. .. Respondents.

Ms.Smita Mane for the appplicant.

Mr.U.B. Nighot for respondent no. 1 to 3.

CORAM : D.G. Karnik J.

Date: 19th August 2006

P.C:-

1. Heard learned counsel for the parties.

2. This revision application is directed against the order dated 13th July, 1999 passed by the learned Additional District Judge, Nashik condoning the delay in filing of an appeal.

3. Learned counsel for the petitioner submits that the learned Judge erred in condoning the delay. The learned Judge ought to have held that the delay was gross and was not sufficiently explained and hence the order needs to be set aside.

4. The jurisdiction of this court under section 115 of Civil Procedure Code is limited and it can interfere only under three circumstances namely :-

(a) Where the trial court has exercised the jurisdiction not related in it by law or ;

(b) Where the trial court has failed to exercise jurisdiction vested in it.

(c) Where the trail court has exercised its jurisdiction illegally or with material irregularity.

5. Admittedly the District Judge, had the jurisdiction to entertain and decide the application for condonation of delay. He has experienced the jurisdiction vested in it and therefore obviously the

case does not fall in the clauses(a) or (b) mentioned above. In my view the learned Judge was also entitled

to appreciate the evidence and on appreciation of the evidence, he has came to the conclusion that the delay was sufficiently explained. The findings of the Additional District Judge, Nashik are possible findings of fact. Supreme Court has in several cases held in the court shall be libral in considering cases for condonation of delay. The learned Additional District Judge, Nashik has therefore rightly condoned the delay.

6. In that circumstances, I find no error in the impugned order. The revision application is accordingly dismissed with no no order as to costs.

(D.G.KARNIK, J.)